



HFC Bank Act 1999

1999 CHAPTER iv

An Act to provide for the transfer to HFC Bank plc and Household International (U.K.) Limited of the business of Beneficial Bank PLC; and for connected purposes. [30th June 1999]

WHEREAS HFC Bank plc (hereinafter called “HFC”) and Beneficial Bank PLC (hereinafter called “Beneficial”) are public limited companies registered in England and Wales under the Companies Acts 1948 to 1967 and 1948 respectively and HFC and Beneficial carry on in the United Kingdom and elsewhere the businesses of banking and financial services and activities related to such businesses:

And whereas HFC and Beneficial are subsidiaries of Household International (U.K.) Limited (hereinafter called “HIUK”), a limited company registered in England and Wales under the Companies Acts 1948 to 1981; and HIUK is a subsidiary of Household International, Inc., a corporation existing under the laws of the state of Delaware:

And whereas for the better conduct of the business of HFC and Beneficial it is expedient that provision be made for the transfer to HFC of the business of Beneficial except any shares in HFC held by Beneficial and for the transfer to HIUK of any such shares and that the transfers should be effected simultaneously and without interference with the conduct and continuity of the businesses carried on by HFC, HIUK or Beneficial:

And whereas it is expedient that the other provisions in this Act should be enacted:

And whereas the Secretary of State for Scotland, the Chairman of Committees of the House of Lords and the Chairman of Ways and Means in the House of Commons have decided pursuant to the provisions of section 1(4) of the Private Legislation Procedure (Scotland) Act 1936 that it is expedient that the powers conferred by this Act should be conferred by one enactment and notice of their decision has been published in accordance with those provisions:

And whereas the objects of this Act cannot be attained without the authority of Parliament:

May it therefore please Your Majesty that it may be enacted, and be it enacted, by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

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1 Short title

This Act may be cited as the HFC Bank Act 1999.

2 Interpretation

(1) In this Act, unless the subject or context otherwise requires—

“account” includes any contract or facility between a person and Beneficial by virtue of which money or any unit of account is, or may be, deposited or borrowed by any person;

“Act of 1998” means the Data Protection Act 1998;

“appointed day” means such day as may, under section 3 (Appointed day) of this Act, be appointed for the purposes of this Act;

“Beneficial” means Beneficial Bank PLC;

“customer” includes any person having a bank account or other dealing, transaction, agreement or arrangement with Beneficial;

“document” means anything in any form in which information of any description is recorded;

“enactment” means any enactment in this Act or in any general or local Act or in any order, rule or regulation made under any Act;

“existing” means existing, outstanding or in force immediately before the appointed day;

“financial year” means, in relation to HFC and Beneficial, a financial year determined in accordance with the provisions of section 223 of the Companies Act 1985 and “last financial year” means the last completed financial year of HFC or of Beneficial, as the case may be, before the appointed day;

“HFC” means HFC Bank plc;

“HIUK” means Household International (U.K.) Limited;

“liability” includes a duty and an obligation of any description (whether present or future, actual, contingent or prospective);

“property” means property and assets of every description (whether present or future, actual or contingent), and includes property and assets held on trust or in a fiduciary capacity and security interests, rights, benefits and powers of every description;

“seal” includes a common seal and also any official seal which may be kept pursuant to section 39 or 40 of the Companies Act 1985;

“security interest” includes a mortgage or charge (in each case whether legal or equitable), debenture, bill of exchange, promissory note, guarantee, lien, pledge (whether actual or constructive), hypothecation, assignment by way of security, indemnity, right of set off, counterclaim, flawed asset arrangement, commitment or other means of securing payment or discharge of a debt or liability;

“subsidiary” has the meaning given by section 736 of the Companies Act 1985;

“trustee” includes a trustee or custodian trustee of any trust, settlement, covenant, contract or will (whether originally so appointed or not; and whether appointed under hand or seal or by order of any court); executor of the will, or administrator of the estate, of a deceased person; judicial trustee appointed

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by order of any court, attorney for another person; or any person acting in a fiduciary capacity;

“the undertaking” means the business and all property and liabilities of Beneficial of whatever nature, except any shares in HFC held by Beneficial but does not include any seal, or any documents relating to the constitution of Beneficial or those documents comprising registers, indices or minute books usually required to be kept by Beneficial at its registered office pursuant to the provisions of the Companies Act 1985; and

“will” includes a codicil and any other testamentary writing.

- (2) Any reference in this Act to property or liabilities of Beneficial is a reference to property or liabilities wherever they are situated or arise and whether or not they are capable of being transferred or assigned by Beneficial and whether Beneficial is entitled or subject to them under the law of any part of the United Kingdom or under the law of any country or territory outside the United Kingdom.

3 Appointed day

- (1) The directors of HFC may appoint a day to be the appointed day for the purposes of this Act.
- (2) Before the day so appointed HFC shall publish in the London Gazette, the Edinburgh Gazette and the Belfast Gazette notice of the day appointed, stating that it is the appointed day for the purposes of this Act.
- (3) The publication of a notice under subsection (2) above shall be conclusive evidence of a day being an appointed day for the purposes of this Act, and a photocopy or other reproduction, certified by an authorised officer of HFC, of a page or part of a page of the London Gazette, the Edinburgh Gazette or the Belfast Gazette containing the notice shall be conclusive evidence of publication of the notice.

4 Transfers to HFC and HIUK

- (1) On the appointed day—
- (a) the undertaking shall, by virtue of this Act and without further assurance, be transferred to HFC to the intent that HFC shall succeed to the undertaking as if in all respects HFC were the same person in law as Beneficial; and
 - (b) any shares in HFC held by Beneficial shall, by virtue of this Act and without further assurance, be transferred to HIUK (and the name of HIUK shall be deemed to be registered in the register of members of HFC) and the transfer shall not constitute a distribution for the purposes of Part VIII of the Companies Act 1985 or a return of capital of Beneficial which would otherwise be unlawful by operation of law.
- (2) Where the transfer of any property or liability comprised in the undertaking is governed by the law of any country or territory outside the United Kingdom, Beneficial shall, if HFC so requires, take all necessary steps for securing that the transfer of the property or liability to HFC is fully effective under the law of that country or territory.

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5 Provisions as to trust property transferred and provisions as to wills

- (1) Any property transferred to HFC by virtue of this Act which immediately before the appointed day was held by Beneficial, whether alone or jointly with any other person, as trustee, shall, on and from the appointed day, be held by HFC alone or, as the case may be, jointly with such other person in the same capacity upon the trusts, and with and subject to the powers, provisions and liabilities, applicable thereto respectively.
- (2) Any existing instrument or order of any court under or by virtue of which any property became or may become vested in Beneficial in any such capacity, and any provision therein, or any existing contract or arrangement for the payment to, or retention by, Beneficial of remuneration for its services in any such capacity, shall, on and from the appointed day, be construed and have effect, so far as the context permits, as if for any reference therein to Beneficial, other than a reference (however worded and whether express or implied) to terms and conditions of, or to a scale of fees of, Beneficial, there were substituted a reference to HFC:

Provided that any right which was exercisable by Beneficial to alter the terms and conditions or the rate, charge, tariff or scale of fees shall on and after the appointed day be exercisable by HFC.

- (3) Any will made before the appointed day which has not been proved in any part of the United Kingdom before the appointed day, and any will made on or after the appointed day, being a will which appoints Beneficial to be an executor, trustee or recipient of any property as trustee, shall be construed and have effect as if for any reference therein to Beneficial as such executor, trustee or recipient or otherwise in connection with such appointment, not being a reference (however worded and whether express or implied) to terms and conditions of, or to a scale of fees of, Beneficial, there were substituted a reference to HFC:

Provided that any right which was exercisable by Beneficial to alter the terms and conditions or the rate, charge, tariff or scale of fees shall on and after the appointed day be exercisable by HFC.

- (4) No testamentary gift shall be adeemed or revoked by reason only of the operation of any of the provisions of this Act.

6 Supplementary provisions as to transfer

Without prejudice to the generality of the foregoing provisions of this Act but subject to any provision of this Act to the contrary effect, the following provisions shall have effect in relation to the undertaking or any part thereof:—

- (1) Subject to paragraph (2) below, every existing contract to which Beneficial is a party (whether in writing or not) shall be construed and have effect on and from the appointed day—
 - (a) as if HFC had been a party thereto instead of Beneficial;
 - (b) subject to paragraph (4) below, as if for any reference (however worded and whether express or implied) to Beneficial there were substituted, as respects anything falling to be done on or after the appointed day, a reference to HFC; and
 - (c) as if any reference (however worded and whether express or implied) to the directors, officers, representatives or employees or to any director, officer, representative or employee of Beneficial were, as respects anything falling to

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be done on or after the appointed day, a reference to the directors, officers, representatives or employees of HFC as the case may require, or to such director, officer, representative or employee of HFC as HFC may nominate for that purpose or, in default of nomination, to the director, officer, representative or employee of HFC who corresponds as nearly as may be to the first mentioned director, officer, representative or employee:

- (2) No director, secretary or auditor of Beneficial shall by virtue only of this Act become a director, secretary or auditor of HFC and paragraph (1) above shall not apply to any contract between Beneficial and a director, secretary or auditor of Beneficial for his services as such:
- (3) Sub-paragraphs (b) and (c) of paragraph (1) above shall, on and from the appointed day, apply to any enactment other than the provisions of this Act and to any provision of any existing contract to which Beneficial was not a party; and sub-paragraphs (a), (b) and (c) of that paragraph shall, on and from the appointed day, apply to any provision of any other existing document (not being a contract or a will) as they apply to a contract to which paragraph (1) above applies:
- (4) Sub-paragraph (b) of paragraph (1) above shall not apply to the name or title of any rate, charge, tariff, scale of fees, terms or conditions of Beneficial which includes the initials, the name or part of the name of Beneficial, but on or after the appointed day HFC may change the name or title:
- (5) An offer or invitation to treat made to or by Beneficial before the appointed day shall be construed and have effect on and after the appointed day as an offer or invitation to treat, as the case may be, made to or by HFC:
- (6) Any account between Beneficial and a customer shall, on and from the appointed day, become an account between HFC and the customer subject to the same conditions and incidents as theretofore; and such account shall be deemed for all purposes to be a single continuing account:

Provided that nothing herein shall affect any right of HFC or of the customer to vary the conditions or incidents subject to which any account is kept:

- (7) For the purpose of construing and giving effect to any contract which—
 - (a) has effect or continues to have effect on, or on and after, the appointed day; and
 - (b) makes reference to a rate, charge, tariff or scale of fees or to terms or conditions published, determined or ascertained from time to time by Beneficial,

HFC shall have the same right under that contract as Beneficial had to publish, determine, ascertain, vary or amend rates, charges, tariffs, scales of fees, terms or conditions, and any such rates, charges, tariffs, scales of fees, terms or conditions published, determined, ascertained, varied or amended by HFC shall apply in place of those which could have been published, determined, ascertained, varied or amended by Beneficial:

- (8) Any existing instruction, order, direction, mandate, power of attorney, authority, commitment, licence, permission or consent given to or by Beneficial (whether in writing or not and whether or not in relation to an account) shall have effect, on and from the appointed day, as if given to or, as the case may be, by HFC:
- (9) Any negotiable instrument or order for payment of money drawn on, or given to, or accepted or endorsed by, Beneficial, or payable at any place of business of Beneficial,